THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25805 of 2006

13.12.2006

Between:

M/s.Mangalore Minerals (P) Ltd., rep. By its Managing Director,
Sri B.Shivaji Mendon, S/o.Late Sri Ramappa

… Petitioner

AND

The Secretary to Union of India, Mines, Shastri Bhavan, New Delhi
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25805 of 2006

ORDER:

The petitioner is an incorporated company, engaged in mining and marketing minerals. Its application for grant of mining lease over an extent of Acs.850.00 (330 Hectares) for silica sand was considered by the second respondent. Mining lease, however, was granted for an extent of Acs.260.00, by an order in G.O.Ms.No.236 (Industries & Commerce) (MI) Department, dated 06.8.2003, in accordance with Mines and Minerals (Development and Regulation) Act, 1957 (the Act, for brevity) and Mineral Concession Rules, 1960 (the Rules, for brevity). The petitioner entered into lease deed as per the Rules, after completing all the formalities. Respondents 6 and 7 also applied for mining lease for silica sand. The petitioner objected for the same. Nonetheless second respondent issued G.O.Ms.No.331, dated 28.7.2003 granting mining lease in favour of sixth respondent over an extent of 12.14 Hectares in survey No.8 of Siddavaram village of Kota Mandal in Nellore District for a period of twenty years. Aggrieved by the same, petitioner preferred revision petition under Section 30 of the Act read with Rule 55 of the Rules. The revision petition was dismissed on 26.9.2005, aggrieved by which the present writ petition is filed.

Learned Counsel for the petitioner submits that respondents 1 and 2 committed error in rejecting the application of the petitioner for grant of 330 Hectares (Acs.815.00) without taking into consideration the requirements of the processing plant set up by the petitioner. The petitioner also finds fault with 9th respondent contending that the said official failed to inform the availability of applied area while recommending for grant of lease for Acs.260.00 which is contrary to the orders of the Government in G.O.Ms.No.181, dated 28.5.1998. He would further urge that the second respondent acted contrary to the provisions of the Act and Rules in granting mining lease only for

Acs.260.00 when the petitioner applied for Acs.815.00, causing prejudice to the interest of the petitioner company. Lastly, it is contended that the reliance placed by revisional authority on the letter dated 14.3.2002 given by the petitioner company is erroneous.

Learned Assistant Government Pleader for Mines and Industries opposed the writ petition. He submits that the petitioner gave consent for accepting lease only in respect of Acs.260.00 giving up his right of consideration in respect of other land applied for. Therefore, according to the learned Assistant Government Pleader, the petitioner has acquiesced in the decision making and, therefore, the writ petition is wholly misconceived.

Before considering the question it is necessary to point out that when an appeal/revision is filed against the order of original authority, order of the original authority merges in appellate/revisional authority. Any challenge, therefore, must be directed towards the order of the superior authority and not the original authority. The logic behind the principle of doctrine of merger is that if an appeal is provided against an order, it is decision of appellate authority also which is operative decision in law. Even when the appellate authority confirms the order of the lower authority it is only such decision, which is effective and can be enforced. Yet another reason is that there cannot be more than one operative order governing the same subject at a given point of time (see **Kunhayammed v State of Kerala**[1] and **S.Shanmugavel Nadar v State of T.N.**[2]).

In **Shanker v Krishna**[3], the Supreme Court while observing that the doctrine of merger applies even to a revisional order, held as follows.

> Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below Section 115 of the Code of Civil Procedure circumscribed circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court, which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior Courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal.

Therefore, any amount of strenuous submissions attacking the

No Objection Certificate (NOC) issued by the 9th respondent or lease granted by the second respondent would be futile. What is to be considered is the validity and legality of the order passed by the first respondent in exercise of the revisional jurisdiction under the Act and Rules.

The first respondent followed a fair procedure. Notice was issued to the petitioner and other applicants as well as the Government. The remarks/comments of the State Government are also called for. After following a fair procedure, the revision was dismissed observing that when there are multiplicity of applications for grant of mineral concession in respect of the same area, State Government has to take a just and judicious decision taking the overall development of mines and minerals in the State and that the State is not bound to grant whole area applied for. The said reasoning is completely in tune with the provisions of the Act. The first respondent observed in the impugned order as under.

> A number of applications are received by the State Government for grant of mineral concession for a particular area and State Government has to take a just and judicious decision in the overall development of mines and minerals in the State while granting the area under RP/PL/ML. It is also true that State Government is not bound to grant whole area applied for to a single applicant leaving the others when justifiable reasons exist before the State Government in their revenue interest & systematic & scientific exploitation of minerals are expected to take judicious decision at the time of grant of mineral concession. Other applicants may be equally equipped to undertake mining scientifically & systematically and therefore such practices may lead to monopolistic tendencies in the mining sector leaving the smaller players in the field without any area for exploitation.

The impugned order, therefore, cannot be faulted. Further, as pointed out by the learned Assistant Government Pleader, petitioner itself gave consent for grant of lease for Acs.260.00 only and executed lease deed as required under the Rules.

Learned Counsel for the petitioner tried to attack this finding by placing reliance on the letter dated 14.3.2002 issued by the Managing Director of the petitioner company and submits that when the conditional consent is given, the same cannot amount to acquiescence. A perusal of the said letter dated 14.3.2002 filed along with the writ petition would not lead to such an inference. As can be seen from the same, when the petitioner's application was forwarded to the MRO, Kota Mandal – ninth respondent herein; he indicated no objection only for Acs.260.00 and, therefore, admittedly the petitioner gave consent observing that the claim for the balance area of

Acs.200.00 is kept in tact. If that be so, nothing prevented the petitioner to apply again subsequently as is the requirement under the Rules. The petitioner did not do so. Having accepted the lease granted by G.O.Ms. No.236 and having completed all formalities, the petitioner has been winning silica sand under the lease, and he cannot now turnaround and impeach the actions of the respondents 1 and 2.

The writ petition is wholly misconceived and is accordingly dismissed. No costs.

December 13, 2006. (**V.V.S.RAO,J**)
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[1] AIR 2000 SC 2587 = (2000) 6 SCC 359
[2] (2002) 8 SCC 361
[3] AIR 1970 SC 1